

# **EXHIBIT 20**

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Los Angeles Superior Court  
JUL 28 2005  
JOHN A. [Signature] Executive Officer/Clerk  
[Signature] Deputy

8  
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
10 **FOR THE COUNTY OF LOS ANGELES**

11 JAMES HARKESS,  
12 Plaintiff,

13 v.

14 **TERRENCE QUINN aka TERRANCE LEE**  
15 **QUATKEMEYER, and DOES 1 through 10,**  
16 inclusive,

17 Defendants.

18 AND RELATED ACTIONS.  
19  
20  
21  
22  
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Lead Case No.: BC 311681  
[Related with Case Nos. BC 330528 and BC 330527]

(Assigned for All Purposes to the  
Honorable James R. Dunn – Dept. 26)

**PLAINTIFF AND CROSS-DEFENDANT  
JAMES R. HARKESS' OPPOSITION  
AND COUNTER-PROPOSALS TO  
DEFENDANTS' OBJECTIONS TO  
COURT'S PROPOSED STATEMENT  
OF DECISION**

Filing Date: March 5, 2004  
Amended: May 10, 2004

1 **I. INTRODUCTION**

2 Both sides in this case asked the Court to determine who owns Windsor  
3 Holdings LLC ("Windsor") and therefore controls Sanitec Worldwide, Ltd. ("Worldwide")  
4 and Sanitec, Ltd. ("Limited") for purposes of the federal litigations in Ohio. Defendants are  
5 the ones that contested control of Windsor, and forced an expensive, year-long litigation,  
6 lengthy trial, and detailed court decision in order to establish Mr. Harkess' ownership. Now  
7 that the decision has gone against them, defendants are essentially asking the Court to gut its  
8 ruling so that they can start the process all over again in other cases here and in Ohio and  
9 perhaps elsewhere.

10 Mr. Harkess respectfully submits that the Court should do exactly the opposite.  
11 Instead the Court should further clarify its findings in light of defendants' objections, so that  
12 it removes any possible basis for defendants' further argument on these issues before this or  
13 any other Court. Mr. Harkess also requests that the Court deny defendants' request for oral  
14 argument and promptly enter final judgment so that the decision can be filed immediately  
15 with the federal court in Ohio. The matter of who controls Windsor, Worldwide and Limited  
16 can then finally be put to bed.

17 **II. SPECIFIC COUNTER-PROPOSALS IN RESPONSE TO DEFENDANTS'**  
18 **OBJECTIONS**

19 Those of defendants' objections that do not simply rehash the evidence are  
20 designed to do one thing: lay the foundation for claiming that Windsor never really owned a  
21 majority interest in Worldwide, has no assets, and controls nothing – in other words, that the  
22 Court's decision on who owns Windsor is meaningless.

23 For example, defendants now suddenly do not want a finding that Windsor is  
24 the majority owner of Worldwide (Objections at 4) (despite asking for it earlier, and arguing  
25 it to the Court). They are now claiming in Ohio federal court that in January 2005, two  
26 months before trial, Mr. Weinstein exercised an option agreement (that, not surprisingly, he  
27 drafted and only he and Quinn are witnesses to) giving him the majority interest in  
28

1 Worldwide, despite testifying at trial that Windsor, not he, was the majority owner of  
2 Worldwide (see attached Exhibit A (Supplemental Status Report)). That is the veiled  
3 reference to "ownership issues" for Worldwide that defendants claim will be litigated in  
4 Case No. BC 330528 (Objections at 4:8-10) and allow that case to survive the Court's  
5 decision. That option is just as fictitious as the Trust.

6 Similarly, defendants do not want a finding that Windsor was formed in July  
7 2001 (Objections at 3) (when its articles were filed with the Secretary of State), so that they  
8 can argue that the transfer of Worldwide stock to Windsor in 2001 was invalid because  
9 Windsor did not exist at the time (and therefore that Windsor did not and does not own  
10 anything). Almost all of defendants' objections are in this same vein, suggesting that what  
11 Mr. Harkess won were the rights to a company that owns and controls nothing. If indeed  
12 that were the case, why did defendants fight so hard to try to obtain a decision that Mr.  
13 Harkess does not own and control Windsor?

14 We believe that the Court did an admirable job in making the appropriate  
15 factual findings on the issues underpinning its decision, in a way that fairly reflects the  
16 evidence, and that gives its ruling meaningful preclusive effect without stepping on the toes  
17 of other courts. Now that defendants have raised their issues, however, we propose that a  
18 few sentences be added to the Court's decision so that its direction is clear and so that the  
19 decision removes any ability for defendants to continue litigating these same issues in any  
20 other case, or to argue that the Court did not make certain findings that it so obviously did.

21 To that end, we have attached a redlined version of the Tentative Ruling  
22 (Exhibit B) and a new Proposed Judgment (Exhibit C) that propose the following  
23 clarifications/confirmations of the Court's findings:

24 (1) Windsor was formed on July 17, 2001, with the filing of its articles of  
25 incorporation with the Secretary of State (Exh. B, at 2:20, 6:26-27 (proposed changes)).  
26 Harkess pled and proved this fact (*see, e.g.*, Second Amended Complaint ¶6; Ex. 223)  
27 because the timing is important. It demonstrates that Windsor was part of (and actually the  
28

1 pinnacle of) the reorganization that Quinn undertook in order to hide his interest in the  
2 Sanitec companies from his creditors. This is a fundamental aspect of Mr. Harkess' unclean  
3 hands/equitable estoppel claim that this Court accepted.

4 (2) Since July 20, 2001, Windsor has been the controlling shareholder of  
5 Worldwide, which has, in turn, been the 100% owner of Limited. (Exh. B, at 2:21-22  
6 (proposed changes)). Harkess pled and proved these facts as well (*see, e.g.*, Second  
7 Amended Complaint ("SAC") ¶6; PX 189). Defendants did not dispute them; Weinsten  
8 confirmed them in response to questioning from the Court (RT 4/06/05 36:25-37:27). The  
9 timing is important for the same reasons as the date Windsor was formed, and the ownership  
10 structure is important because it establishes that Windsor holds certain assets (ownership of  
11 Limited, through Worldwide) that Quinn was motivated to, and did, attempt to hide in  
12 Windsor. Again, this is also a fundamental aspect of Mr. Harkess' unclean hands/equitable  
13 estoppel claim.

14 (3) David Kaye became the managing member, and therefore sole owner, of  
15 Windsor in late July 2001. (Ex. B, at 7:1-2, 20-22 (proposed changes)). Harkess pled and  
16 proved the timing of the transfer (*see, e.g.*, SAC ¶¶8-14; PX 216) because it clearly links  
17 Quinn's transfer of ownership and apparent authority to Kaye as part of Quinn's attempts to  
18 hide his assets from creditors.

19 (4) Harkess became the managing member, and therefore sole owner, of  
20 Windsor in July 2003 with the transfer from David Kaye. (Ex. B, at 2:5, 8; 7:20-22; 8:4-5  
21 (proposed changes)). Harkess plead and provided the timing of the transfer (*see, e.g.*, SAC  
22 ¶9-14; PX 165-68) because the timing establishes Harkess' control over the settlement  
23 process and dismissals of the lawsuits in Ohio on behalf of Limited.

24 (5) Weinsten testified that his company, Salem Associates, was issued a  
25 minority interest in Worldwide by Quinn in May 2002, but the validity of that interest was  
26 not directly before the Court in this case.

27 (6) Mr. Harkess has proposed a few other minor word clarifications to  
28

1 address the claims raised by defendants (Ex. B, at 4:11, 14-17; 6:27-28). Most important, we  
2 have proposed clarifications that: (a) Weinstein did claim that in June 2002 he received a  
3 copy of the Trust that was signed by Quinn, but that claim was not credible in light of  
4 Weinstein's other testimony; and (b) the Windsor articles filed with the Secretary of State in  
5 2001 did not list anyone as a member or manager, not even Kaye (*see* PX 236).

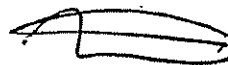
6 Finally, Mr. Harkess submits that the Court should stick to its finding  
7 regarding the fact that, like with Windsor Holdings and David Kaye, Quinn hid his  
8 ownership interest in Sanitec West behind his friend, Mary Riedinger. Mr. Harkess proved  
9 this fact through his own testimony, the testimony of David Kaye, and the admissions of  
10 Weinstein in federal court in Ohio, and it went noticeably un rebutted by Mr. Quinn. It is an  
11 important fact that demonstrates Quinn's overall scheme to hide his Sanitec assets in the  
12 names of others, of which Windsor was a part. Whether and how this finding impacts Ms.  
13 Riedinger's ability to maintain her lawsuit against Mr. Harkess, Mr. Kaye and the many  
14 other defendants in the *Riedinger* Litigation is besides the point and will be litigated in that  
15 case. Ms. Riedinger, who was not a party here, will have ample opportunity to show (if she  
16 can), that she actually paid consideration for her interest in Sanitec West and was not just a  
17 figurehead for Quinn and another way for him to hide assets.

18 **III. CONCLUSION**

19 For all of the foregoing reasons, Mr. Harkess respectfully requests that the  
20 Court make Mr. Harkess' proposed changes to the Tentative Ruling, and enter that amended  
21 Ruling and the attached Proposed Judgment as the final statement of decision and judgment  
22 of the Court.

23 DATED: July 26, 2005

24 Respectfully submitted,  
25 **WESTON, BENSHOOF, ROCHEFORT,**  
26 **RUBALCAVA & MacCUISH LLP**



27 Michael J. Hartley  
28 Attorneys for Plaintiff and Cross-Defendant  
JAMES HARKESS

**EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

SANITEC WEST, et al.	)	CASE NO. 1:02 CV 01582
	)	
Plaintiffs,	)	JUDGE DONALD C. NUGENT
	)	
v.	)	
	)	PLAINTIFF SANITEC, LTD.'S
JOSEPH DELLOIACOVO, et al.	)	MAY 17, 2005 SUPPLEMENT TO
	)	ITS APRIL 29, 2005 STATUS
Defendants.	)	REPORT

Undersigned counsel for Sanitec, Ltd. has learned, and thus hereby gives notice to this Court and to counsel, that on January 11, 2005, Salem Associates, Inc. ("Salem") – already then the 49% shareholder of Sanitec Worldwide, Ltd ("Sanitec Worldwide") – exercised its option to purchase four percent (4%) of the issued and outstanding shares of Sanitec Worldwide, which resulted in the purchase by Salem of an additional 8.33 shares of Sanitec Worldwide, and as a result of which Salem owns 106.33 shares (representing 51.0392%) of Sanitec Worldwide.<sup>1</sup>

Respectfully submitted,

/s/ Steven J. Miller

STEVEN J. MILLER (0014293)

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Attorney for Plaintiff Sanitec, Ltd.

<sup>1</sup> Following Salem's exercise of its purchase option, Windsor Holdings LLC's ownership of 102 shares of Sanitec Worldwide represents a 48.9608% interest.



Case 1:02-cv-01582-DCN Document 174 Filed 05/17/2005 Page 2 of 2

**CERTIFICATE OF SERVICE**

I hereby certify that on May 17, 2005, a copy of the foregoing was filed electronically.

Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

/s/ Steven J. Miller

STEVEN J. MILLER



IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

<p>SANTEC WEST, <i>et al.</i>,</p> <p style="text-align: center;">Plaintiffs,</p> <p style="text-align: center;">vs.</p> <p>JOSEPH DELLOIACOVO, <i>et al.</i>,</p> <p style="text-align: center;">Defendants.</p>	<p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p>	<p>CASE No. 1:02 CV 1582</p> <p>JUDGE DONALD C. NUGENT</p> <p>RESPONSE TO MAY 17, 2005</p> <p>SUPPLEMENT TO THE APRIL 29, 2005</p> <p>STATUS REPORT FILED WITH THIS</p> <p>COURT BY STEVEN J. MILLER OF</p> <p>GOODMAN WEISS MILLER LLP</p>
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This is submitted in response to the May 17, 2005 Supplement to the April 29, 2005 Status Report filed with this Court by Steven J. Miller of Goodman Weiss Miller LLP (Docket No. 174). Mr. Miller represents that he learned that Salem Associates, Inc. ("Salem"), an entity owned by Jeffrey Weinstein ("Weinstein"), purchased on January 11, 2005 four percent of the shares of Sanitec Worldwide, Ltd. ("Worldwide") and now owns the majority interest in that company.<sup>1</sup> However, either Mr. Miller is mistaken or certain persons committed perjury in a recent trial in California state court.

Weinstein, a convicted felon and disbarred attorney (*In re Weinstein*, 279 A.D.2d 130 (N.Y. App. Div. 2000)), is a trustee of a purported trust, the Windsor Trust, which allegedly owns the stock of Windsor Holdings, LLC. (Document No. 149 at 2 & n.2). As Miller previously represented here, Windsor Holdings, in turn, owns a majority of shares in Worldwide. (*Id.* at 1). In his February 2, 2004 brief filed with this Court, Miller stated that Worldwide is owned 51% by Windsor Holdings and 49% by Salem. (*Id.*).

The issue of the ownership of Windsor Holdings is the subject of the pending case in California, *Harkess v. Quinn*, Superior Court of Los Angeles County, California, No. BC311681.

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<sup>1</sup> Worldwide owns 100% of the shares of plaintiff, Sanitec, Ltd.

(See Document No. 169, 172). The Windsor Trust was a party to that action as a cross-complainant. (Ex. 1). Documents and evidence flatly contradict Mr. Miller's assertion that Salem had a majority interest in Worldwide on January 11, 2005. The evidence includes the following:

- Weinstein testified at trial in the Harkess case. On April 6, 2005, he testified that Salem had 98 shares of Worldwide and Windsor Holdings had 102 shares. (Ex. 2 at 155:5-11 (4/06/05). Obviously, Weinstein would not have given that sworn testimony if the purported option had been exercised in January 2005.
- In its post-trial brief, filed April 21, 2005, Windsor Trust included an attachment claiming that Worldwide is owned "by Windsor Holdings LLC (102 shares) (Windsor Trust) and Salem Associates, Inc. (DE) (98 shares) (Weinstein)." (Ex. 3 at 10).

In addition to that conclusive evidence of Worldwide's ownership, one of the co-trustees of the Windsor Trust that allegedly owns Windsor Holdings, James Smith ("Smith"), filed a lawsuit in Superior Court of Los Angeles County, California, on March 18, 2005, in which he expressly alleged that "Windsor Holdings is the majority shareholder of a Delaware corporation known as Sanitec Worldwide, Ltd." (Ex. 4 ¶ 8). Thus, Salem's purportedly purchase of four percent of the shares of Worldwide from Windsor Holdings in January 2005 was unknown to Smith, a co-trustee with Weinstein of the Windsor Trust.

Therefore, the clear and unambiguous evidence, including sworn testimony and judicial admissions, are contrary to the representations in the May 17 filing by Mr. Miller.

Dated: May 23, 2005

Respectfully submitted,

/s/ Richard J. Oparil

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Attorneys for Plaintiffs Sanitec, Ltd.  
and A.B.B. Sanitec West, Inc.

**CERTIFICATE OF SERVICE**

The undersigned certifies that the foregoing was filed electronically with this Court on May 23, 2005. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Richard J. Oparil  
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Attorneys for Plaintiffs Sanitec, Ltd.  
and A.B.B. Sanitec West, Inc.

#3866175

Exhibit 1

From: Slater Hathaway LLP (626) 795-1616 To: Michael Hartley

Date: 7/20/2004 Time: 4:57:54 PM

Page 2 of 7

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Attorneys for TERENCE QUINN and THE WINDSOR TRUST

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OUTSIDE ATTORNEY'S OFFICE

JUL 20 2004

JAMES R. DUNN, DEPT. 26  
By \_\_\_\_\_ Deputy  
JUL 20 2004

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

JAMES HARKESS,

Plaintiff,

v.

TERRANCE QUINN, and DOES 1-10,  
inclusive,

Defendants.

Case No. BC311681

**CROSS-COMPLAINT FOR  
DECLARATORY RELIEF**

[Assigned for All Purposes to Hon.  
James R. Dunn, Dept. 26]

TERRANCE QUINN, and JAMES H.  
SMITH, as Trustee of THE WINDSOR  
TRUST, u/d/t dated June 21, 2002

Cross-Complainants,

v.

JAMES HARKESS, and DOES 1 through  
10,

Cross-Defendants.

Complaint Filed: April 28, 2004  
FSC: NONE SET  
Trial Date: NONE SET

COME NOW Cross-Complainants TERRANCE QUINN (hereafter sometimes  
"Quinn") an individual, and THE WINDSOR TRUST, dated June 24, 2002 (hereafter  
sometimes the "Windsor Trust"), who allege claims against cross-defendants, and each of  
them, as follows:

**INTRODUCTION**

1. Cross-complainants are seeking declaratory relief to resolve a dispute as to

**CROSS-COMPLAINT FOR DECLARATORY RELIEF**



1 who is the true owner of Windsor Holdings, LLC., (hereafter sometimes "Windsor LLC"),  
2 a California limited liability company, which was organized at the behest and instruction of  
3 defendant and cross-complainant Quinn. The Windsor Trust was formally organized and  
4 incorporated with the California Secretary of State on July 17, 2001. Quinn is a  
5 co-beneficiary of the Windsor Trust, which is the real party in interest in that any  
6 ownership interest that Quinn may have had in Windsor LLC was assigned to the Windsor  
7 Trust on June 24, 2002.

8 2. Cross-defendant JAMES R. HARKESS (hereinafter "Harkess") with the  
9 assistance of others, wrongfully converted the corporate books and records of Windsor  
10 LLC in or about July of 2003, and illegally declared himself as the 100% sole owner of the  
11 company by directing the false issuance of a stock certificate in his name. Such fraudulent  
12 conduct and theft of Windsor Trust's true ownership of the company has substantially  
13 affected cross-complainants' title, interest, benefits and control in and to substantial other  
14 property rights and assets which belong to the Windsor Trust, not to Harkess. These  
15 ownership rights are essential to also determine which party has the right and authority to  
16 bind and act on behalf of Windsor LLC in connection with other business affairs and  
17 litigation that is pending in separate actions in the states of Ohio, Delaware and this state.

18 3. Cross-complainants seek a declaration that it is the Windsor Trust which  
19 owns the entire right, title and interest in Windsor LLC and that cross-defendant  
20 HARKESS has no right, title or interest in Windsor LLC.  
21

#### 22 GENERAL ALLEGATIONS

23 4. Cross-complainant Quinn is, and at all times herein mentioned was, a  
24 resident of the County of Los Angeles, State of California.

25 5. Cross-complainant Windsor Trust, is a valid irrevocable trust in good  
26 standing, organized in accordance with and pursuant to the laws of the State of California,  
27 having its co-trustee being James H. Smith herein, with a business address in Los Angeles  
28 County, California.

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Date: 7/20/2004 Time: 4:57:54 PM

Page 4 of 7

1           6. Cross-complainants are informed and believe, and based thereon allege, that  
2 at all times herein mentioned, cross-defendant Harkess is a resident of the County of Los  
3 Angeles, State of California.

4           7. The true names and capacities of Roes 1 through 100, inclusive, are unknown  
5 to cross-complainants who, therefore, sues such cross-defendants by such fictitious names,  
6 and cross-complainants will amend this complaint to show their true names and capacities  
7 when the same has been ascertained. Based on information and belief, each of the  
8 fictitiously-named cross-defendants acted as an agent, employee, servant, principal, partner,  
9 shareholder, or co-conspirator of the other cross-defendants, or is otherwise responsible for  
10 the acts and omissions alleged in this complaint.

11           8. Cross-complainants are informed and believe, and based thereon allege, that  
12 at all times herein mentioned, cross-defendants, and each of them, were the agents,  
13 employees, servants, principals, partners, shareholders, or co-conspirators of the other  
14 cross-defendants, acted within the scope of their authority as such agents, employees,  
15 servants, principals, partners, shareholders, or co-conspirators of the other  
16 cross-defendants, and approved and ratified the alleged acts and omissions of the other  
17 cross-defendants.

18           9. Windsor LLC was organized as a California limited liability company on July  
19 17, 2001. Cross-complainant Quinn retained Mitchell R. Miller, attorney at law, to  
20 incorporate Windsor LLC. At the time of Windsor LLC's organization, Quinn was  
21 undecided as to how to take title and issue any stock or certificate(s) of interest. This  
22 decision however was made in or about May of 2002 when Quinn decided to form an  
23 irrevocable trust to hold the ownership title to Windsor LLC. On or about June 24, 2002,  
24 Quinn created the Windsor Trust, naming himself as a co-beneficiary and James H. Smith  
25 and Jeffrey J. Weinsten as co-trustees. At this time Quinn also assigned the ownership of  
26 Windsor LLC to the Windsor Trust. A true and correct copy of the Trust is attached hereto  
27 and marked as Exhibit "A".

28           10. Cross-complainants are informed and believe, and based thereon allege, that

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Date: 7/20/2004 Time: 4:57:54 PM

Page 5 of 7

1 in or about July of 2003, cross-defendant Harkess, by and with the assistance of others,  
2 fraudulently converted the original books and records of Windsor LLC and inserted his  
3 name as the owner of the company, which was back dated to be effective November 21,  
4 2002. Harkess has since then illegally held himself out to be the sole owner of Windsor  
5 LLC. This act of conversion was wilfully intended by Harkess to harm Quinn and outright  
6 steal Quinn's ownership of Windsor LLC (now held by the Windsor Trust), which held  
7 significant intellectual property rights as well as other assets.

8 11. At no time whatsoever has Quinn or the Windsor Trust sold, gifted,  
9 transferred, or conveyed its ownership of Windsor LLC to Harkess, or any other third  
10 party. Nor has Quinn or the Windsor Trust ever authorized or instructed anyone to do so  
11 on his behalf.

12 12. Cross-complainants are informed and believe, and based thereon allege, that  
13 at all times herein mentioned, cross-defendants, and each of them, knew that Quinn had  
14 previously created the Windsor Trust, that he had assigned the ownership of Windsor LLC  
15 to the Windsor Trust, and that he had never transferred his ownership, nor authorized any  
16 issuance of stock ownership in Windsor LLC, to anyone since its inception.

17 13. An immediate, real, and justiciable controversy now exists between the  
18 parties to this action regarding the true ownership of Windsor LLC.

19 14. Harkess claims that he owns Windsor LLC as a result of his wrongful  
20 conversion of the original corporate books and records of the company and issuance of a  
21 certificate of interest in his name, dated November 21, 2002.

22 12. Cross-complainants therefore seeks a declaration that the right, title and  
23 interest in and to Windsor LLC is vested in the name of the Windsor Trust alone, and that  
24 Harkess be enjoined from asserting any estate, right, title and interest in Windsor LLC  
25 adverse to the Windsor Trust.

26  
27 WHEREFORE, Cross-Complainants pray for judgment as follows:

28 1. A declaration and determination that the Windsor Trust is the rightful owner

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Date: 7/20/2004 Time: 4:57:54 PM

Page 6 of 7

1 of Windsor LLC, and that Harkess be declared to have no right, title or interest in Windsor  
2 LLC;

3 2. A preliminary and permanent injunction enjoining cross-defendants, and each  
4 of them, from claiming any right, title or interest in Windsor LLC;

5 3. For attorney's fees and costs incurred herein; and

6 4. For such other relief as the court may deem just and proper.  
7

8 Dated: July 19, 004.

Respectfully submitted,

SLATER HATHAWAY, LLP

By 

Mark M. Hathaway, Esq.  
Attorneys for Cross-complainants  
TERRANCE QUINN and THE  
WINDSOR TRUST, dated June 24, 2002

From: Slater Helthaway LLP (828) 795-1618 To: Michael Hartley

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Page 7 of 7

PROOF OF SERVICE

STATE OF CALIFORNIA  
 COUNTY OF LOS ANGELES } ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 200 South Los Robles Avenue, Ste 530, Pasadena, California 91101-2432.

On July 19, 2004 I served the foregoing document, described as CROSS-COMPLAINT FOR DECLARATORY RELIEF on all interested parties listed below by transmitting to all interested parties a true copy thereof as follows:

Michael J. Hartley, Esq.  
 Weston Benshoof et al LLP  
 333 S. Hope Street 16FL  
 Los Angeles, CA 90071-1406

☐ BY FACSIMILE TRANSMISSION from FAX No. (626) 795-1616 to the fax numbers set forth above.

☐ The facsimile machine I used complied with Rule 2003(3) and no error was reported by the machine. Pursuant to Rule 2005(j), I caused the machine to print a transmission record of the transmission, a copy of which is attached to this declaration.

☐ BY EXPRESS SERVICE: I caused such document to be deposited in a box or other facility regularly maintained by the express service carrier or delivered to an authorized courier or driver authorized by the express service carrier to receive documents, in an envelope or package designated by the express service carrier with delivery fees paid or provided for, addressed to the person on whom it is to be served.

☒ BY MAIL as follows:

☐ placing a true copy thereof in a sealed envelope addressed as stated on the ATTACHED MAILING LIST.

☒ placing ☐ the original ☒ a true copy thereof enclosed in a sealed envelope addressed as set forth above.

☐ I deposited such envelope in the mail at Pasadena, California. The envelope was mailed with postage thereon fully prepaid.

☒ I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on that same day with postage thereon fully prepaid at Pasadena, California in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than one (1) day after date of deposit for mailing in affidavit.

☐ BY PERSONAL SERVICE as follows: I delivered such envelope by hand to the offices of the addressee.

☐ FEDERAL - I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

☒ STATE - I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on July 19, 2004, at Pasadena, California.

  
 Lindsay Zimmer

**Exhibit 2**

RUFF0406.TXT

22 STANDARD TRUST TO TRANSFER THE SHARES BACK TO -- TO  
23 SANITEC WORLDWIDE, WHAT THE STANDARD TRUST WAS DOING  
24 HERE WAS RELEASING ALL OF ITS RIGHTS AND CLAIMS FOR ALL  
25 TIME, THAT IT MAY'VE HAD SEPARATE AND APART FROM THE  
26 STOCK WHICH IT NEVER HAD IN THE FIRST PLACE.

27 Q. AND THAT'S WHAT YOU TESTIFIED TO IN  
28 DEPOSITION IN DELAWARE?

HARKESS VS. QUINN ROUGH DRAFT ASCII (TRIAL 4/06/05) 155

1 A. I DON'T RECALL THAT.

2 THE COURT: LET'S MOVE ON TO SOMETHING ELSE.

3 MR. HARTLEY: OKAY.

4 BY MR. HARTLEY:

5 Q. UH LAST QUESTIONS, MR. QUINN?

6 A. MR. WEINSTEN.

7 Q. UH MR. WEINSTEN YOU HAVE -- YOU SAY YOU  
8 HAVE A 49 PERCENT INTEREST IN WIND SOAR IN UH SANITEC  
9 WORLDWIDE THROUGH YOUR THROUGH SALE AND ASSOCIATES?

10 A. I HAVE 98 SHARES ISSUED AND UH-H-H --  
11 WINDSOR HOLDINGS HAS A HUNDRED AND 2 SHARES ISSUED.

12 Q. AND YOU OBTAINED THOSE SHARES FROM WIND OR  
13 HOLDING I MEAN FROM SANITEC WORLD WIDE IN APPROXIMATELY  
14 MAY OF 2 NOW AND 2?

15 A. THAT'S CORRECT.

16 Q. AND DURING THAT AND AT THE R THAT PERIOD OF  
17 TIME THERE WAS LITIGATION PENDING THE DELLOICOVO  
18 LITIGATION AND OTHER OTHER LITIGATIONS OVER THE ASSETS  
19 OF SANITEC LIMITED?

20 A. THAT'S CORRECT.

21 Q. AND YOUR TESTIMONY IN IN DELAWARE WAS THAT  
22 YOU PAID A NOMINAL CONSIDERATION FOR THOSE SHARES  
23 CORRECT?

RUFF0406.TXT

24 A. THAT'S CORRECT.

25 MR. HARTLEY: NO FURTHER QUESTIONS, YOUR HONOR.

26 {NOTE: 2 NOW AND 1 IS 2,000 AND 1 THROUGHOUT. END  
27 NOTE}.

28 MR. HATHAWAY: I'D LIKE TO SHOW WHAT I MARKED  
HARKESS VS. QUINN ROUGH DRAFT ASCII (TRIAL 4/06/05)

156

1 TRUST EXHIBIT FOR IDENTIFICATION.

2 THE COURT: IS THIS THE TRUST OR --.

3 MR. HATHAWAY: THIS IS THE ALL UM LETTER THAT THE  
4 WITNESS WROTE TO DANIEL DRIESBACH\*\* AFTER HIS UM  
5 DEPOSITION IN DELAWARE THAT CORRECTS THE RECORD {NOTE:  
6 5 31. END NOTE}.

7 THE COURT: DID YOU SHOW THIS TO COUNSEL.

8 MR. HATHAWAY: I'LL SHOW IT TO COUNSEL.

9 MR. HARTLEY: YOUR HONOR WE'VE NEVER SEEN THIS.

10 THE COURT: DON'T SHOW IT TO ANYONE.

11 THE COURT: SHOW IT TO COUNSEL.

12 MR. HATHAWAY: I'VE SHOWN HAVE --

13 MR. HARTLEY: YOUR HONOR, I MOVE THAT THIS -- THIS  
14 SHOULD NOT BE ADMITTED. THIS IS -- THIS IS -- STUFF  
15 THAT'S CLEARLY BEEN REQUESTED -- DOCUMENT REQUESTED. IT  
16 HAD ACTUALLY EXISTED AT THE TIME.

17 (SPOKE SIMULTANEOUSLY; UNINTELLIGIBLE.)

18

19 MR. HARTLEY: THERE'S NO INDICATION THAT THIS  
20 HAS --

21 MR. HATHAWAY: I -- I WILL REPRESENT TO THE COURT  
22 THAT THERE HAS BEEN AN UNDERSTANDING AND AGREEMENT, I  
23 BELIEVE IN WRITING THAT THE PARTIES WERE NOT GONNA  
24 REPRODUCE TO EACH OTHER DOCUMENTS THAT WERE CONTAINED OR  
25 PART OF THE OTHER LITIGATIONS. THERE'S A DELAWARE



**Exhibit 3**

1 **SLATER HATHAWAY LLP**

2 ATTORNEYS

3 200 SOUTH LOS ROBLES AVENUE, SUITE 530  
PASADENA, CALIFORNIA 91101-2432

4 TELEPHONE: (626) 795-1600

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5 MARK M. HATHAWAY SBN 151 332  
6 Attorneys for WINDSOR TRUST and  
TERRANCE QUINN

**ORIGINAL FILED**

APR 21 2005

**LOS ANGELES  
SUPERIOR COURT**

7  
8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT**

10  
11 JAMES HARKESS,

12 Plaintiff,

13 v.

14 TERRANCE QUINN, WINDSOR TRUST,  
u/d/t dated June 21, 2002, and DOES 1-10,  
15 inclusive.

16 Defendants.

Case No. BC311681

**POST TRIAL BRIEF**

[Assigned for All Purposes to Dept. 26,  
Hon. Hon. James R. Dunn]

Trial Date: March 28, 2005

Time: 9:00a.m.

Location: 111 N. Hill St., Dept. 26

17 **AND RELATED CROSS-ACTION.**

18  
19 **INTRODUCTION**

20 Plaintiff James R. Harkess brought this declaratory relief action to determine the  
21 ownership of Windsor Holdings LLC, a California limited liability company formed by  
22 defendant Terrance Quinn in July 2001. Defendant Terrance Quinn and defendants James  
23 H. Smith and Jeffrey Weinsten, as trustees of the Windsor Trust u/d/t dated June 24, 2002,  
24 contend that Mr. Quinn irrevocably assigned his economic and ownership interest in  
25 Windsor Holdings LLC to the Windsor Trust in June 2002 and that the Windsor Trust is  
26 the sole member of Windsor Holdings LLC. Plaintiff Harkess contends that he became the  
27 sole member of Windsor Holdings LLC in mid-July 2003 with the assistance of David  
28 Kaye and Peter Babos, Mr. Quinn's attorney.

1 Based upon testimony and document evidence presented at trial and for the reasons  
2 set forth herein, the sole membership of Windsor Holdings LLC is vested in James H.  
3 Smith and Jeffrey Weinstein, as trustees of the Windsor Trust w/d/t dated June 24, 2002.

#### 4 5 FORMATION OF WINDSOR HOLDINGS, LLC

6 Windsor Holdings LLC was established as part of a corporate restructuring of Mr.  
7 Quinn's 1999 acquisition of Sanitec, Ltd. Exh. 21. Following the reorganization  
8 performed by New Jersey law firm Lowenstein Sandler, Windsor Holdings LLC was to  
9 hold the shares of Sanitec Worldwide, Ltd., which in turn owned Sanitec Ltd., a  
10 manufacturing company and owner of the Sanitec® trademark and patents.

11 Windsor Holdings LLC came into existence on July 17, 2001 when Mr. Quinn's  
12 attorney filed articles of organization with the Secretary of State pursuant to Corp. Code §  
13 17050(c). Exh. 223. The undisputed evidence shows that Windsor Holdings LLC was  
14 organized by attorney Mitchell R. Miller, Esq. at the request of his client, Terrance Quinn,  
15 and that Mr. Quinn paid for the organization of Windsor Holdings LLC. Exh. 408.

16 A "limited liability company" or "domestic limited liability company" is an entity  
17 with one or more members organized under the Beverly-Killea Limited Liability Company  
18 Act. Corp. Code § 17001(t); Corp. Code § 17101. A limited liability company may  
19 conduct business, sue and be sued, and exercise all the powers of a natural person, in its  
20 own name. See Corp. Code § 17003.

21 An LLC has two basic organizational documents. The first is the "articles of  
22 organization," a one-page statutory form, which must be filed with the Secretary of State.  
23 Corp. Code § 17050(c). The second is the "operating agreement," which may be any  
24 agreement, written or oral, among the member(s) as to the affairs of the LLC and the  
25 conduct of its business. Corp. Code § 17001(ab) The operating agreement may be as  
26 simple as an agreement or intent to organize an LLC.

27 An LLC must have at least one member (Corp. Code § 17050(b)) and members may  
28 be natural persons, partnerships, limited partnerships, trusts, estates, associations,

1 corporations, other LLCs, or other types of entities, whether domestic or foreign. Corp.  
2 Code § 17001(x), (ae).

3 On formation of an LLC, its member(s) is the persons, or person, who enter into its  
4 operating agreement before or after filing of its articles of organization. Corp. Code §  
5 17050(a). After an LLC is formed, a person may become a member only by acquiring a  
6 membership interest from the LLC in conformity with its articles of organization or  
7 operating agreement or, if those documents do not otherwise provide, by vote of a majority  
8 in interest of the members, – excluding the vote of the person acquiring the membership  
9 interest, – and only on becoming a party to the operating agreement. Corp. Code §  
10 17100(a)(1).

11 A “membership interest” refers to a member’s rights in the limited liability company,  
12 collectively, including the member’s economic interest, any right to vote or participate in  
13 management, and any right to information concerning the business and affairs of the  
14 limited liability company. Corp. Code § 17001(z).

15 An LLC may be managed either by all of its members or by one or more managers.  
16 Corp. Code §§ 17150, 17151. The managers may be or include some of the members  
17 (Corp. Code § 17151(a)) and do not need to be natural persons. Corp. Code § 17151(c).  
18 The LLC’s business and affairs are to be managed by all of its members unless the articles  
19 of organization state that an LLC will be managed by one or more managers. Corp. Code §  
20 17151(b). In this case, the articles of organization does state that management of Windsor  
21 Holdings LLC is vested in only “one manager,” who does not need to be a member under  
22 Corp. Code § 17151(c). See Exhibit 223, ¶ 5.

23 As of its formation on July 17, 2001, Mr. Quinn was the sole person entitled to an  
24 economic interest in Windsor Holdings LLC and the sole person who could enter into an  
25 operating agreement, – written or oral, – and was, therefore, its owner and sole member.

26 Shortly after Windsor Holdings LLC came into existence, Mr. Quinn, as the sole  
27 director of Sanitec Worldwide, Ltd., authorized the issuance of Sanitec Worldwide, Ltd.  
28 shares to Windsor Holding LLC. As a result of the corporate restructuring, Sanitec

1 Worldwide, Ltd. was the sole shareholder of Sanitec, Ltd., the company Mr. Quinn had  
2 acquired in 1999. On or about July 27, 2001, Jeffery Weinstein and Joe Delloiacovo  
3 executed share Certificate No. 3 to complete the issuance of Sanitec Worldwide, Ltd.  
4 shares to Windsor Holdings I.L.C. Exh. 78. 408.

5 As of August 2001, Mr. Quinn was the sole owner or member of Windsor Holdings  
6 LLC, which owned Sanitec Worldwide Ltd., which in turn owned Sanitec Ltd. (See, Exh.  
7 21, 22 for complete history.) Mr. Quinn, who was undergoing medical treatment for  
8 cancer and other health problems and was facing Federal indictment, was looking for  
9 someone to act as manager and facilitate the sale of Sanitec, Ltd. to a third party.

10  
11 **DAVID KAYE AS MANAGER**

12 David Kaye is the principal of Strategic Financial Advisors and was retained by  
13 Terrance Quinn to raise capital for the development of ABB Sanitec West, Inc. ("Sanitec  
14 West") through private investment offerings. Mr. Kaye testified that Mr. Quinn was his  
15 client and that he was Mr. Quinn's fiduciary.

16 It is not disputed that after the formation of Windsor Holdings LLC and following a  
17 meeting with Mark J. Richardson, Esq., Mr. Kaye's securities lawyer, Mr. Quinn asked Mr.  
18 Kaye to serve as manager of Windsor Holdings LLC and to represent himself as the  
19 managing member in the potential sale of Sanitec Ltd. to Eden Environmental LLC.  
20 (Quinn and Kaye Testimony)

21 On October 12, 2001, Mr. Kaye and Mr. Quinn memorialized their arrangement in a  
22 hand-written memorandum. Exh. 217. The substance of the memorandum is that Mr.  
23 David Kaye would execute the term sheet for Eden Environmental LLC's acquisition of  
24 Sanitec, Ltd. as "managing member" of Windsor Holdings, LLC, if Mr. Quinn and the  
25 Windsor Holdings LLC agreed to fully indemnify Mr. Kaye for representing himself as the  
26 managing member.

27 Since the Windsor Holdings LLC articles of organization state that management is  
28 vested in only "one manager," (Exh. 223. ¶ 5), David Kaye could serve as the one manager

1 without being a member. See, Corp. Code § 17151(c). This would be akin to a  
2 corporation hiring a president or CEO who was not a shareholder. David Kaye's testimony  
3 and the memorandum made it clear that Mr. Kaye was operating as a consultant to and  
4 under the direction of Mr. Quinn and did not have any independent managing authority or  
5 ownership interest. (Kaye Testimony p. 15-16) In addition to Mr. Kaye's testimony  
6 regarding his being Mr. Quinn's fiduciary, an LLC manager owes the same fiduciary duties  
7 to an LLC and to its members that a partner owes to a partnership and to the other partners.  
8 Corp. Code § 17153; see Corp. Code § 16404 (describing partners' fiduciary duties).

9 David Kaye's actions as manager was limited to negotiation of the sale of Sanitec,  
10 Ltd. to Eden Environmental LLC and the execution of several documents as managing  
11 member. Exhs. 216, 458, 220. There is no evidence that David Kaye acted as manager or  
12 managing member of Windsor Holdings LLC after January 2002. Since Windsor Holdings  
13 LLC is merely a holding company for the shares of Sanitec Worldwide Ltd., the need for  
14 action by a manager is somewhat limited. Mr. Kaye's more significant roles were that of  
15 president and chairman of Sanitec, Ltd. and the raising of private capital for Sanitec West  
16 through his company Strategic Financial Advisors.

17 Mr. Kaye's compensation for his work on the Eden Environmental LLC transaction  
18 was 1% of \$9 Million sale price if the transaction was successful. Exh. 217, p. 2. This  
19 compensation was in addition to substantial fees paid to Strategic Financial Advisors for  
20 raising private capital for Sanitec West.

21 The arrangement did not grant Mr. Kaye any ownership or membership interest in  
22 Windsor Holdings, LLC. Mr. Kaye's handwritten memorandum contradicts any claim that  
23 Mr. Kaye acquired a membership interest in Windsor Holdings LLC or was, in fact, a  
24 bonafide managing member.

25 No evidence was presented that David Kaye became a member of Windsor Holdings  
26 LLC under the required procedures of Corp. Code § 17100(a)(1). Mr. Kaye was never a  
27 party to any operating agreement with Mr. Quinn, oral or written, and did not agree to act  
28 as manager until after Windsor Holdings LLC was formed. David Kaye never purchased,

1 subscribed to, or sought to acquire a membership interest in Windsor Holdings LLC. No  
2 evidence was presented that Mr. Quinn ever intended to transfer his ownership of Windsor  
3 Holdings LLC to Mr. Kaye. Mr. Kaye's only claim under the arrangement was for  
4 indemnity and a 1% fee if the transaction was successful. Exh. 217. Even if he did acquire  
5 some claim or right to an economic interest in Windsor Holdings LLC, David Kaye only  
6 held any such claim or right as a fiduciary for the benefit of his client Terrance Quinn.

7 As of early May 2002, Sanitec Ltd. and Sanitec West were in Federal litigation  
8 against Joe Delloiacovo and others for their theft of Sanitec, Ltd.'s intellectual property  
9 and other torts (Exh. 114), and the sale to Eden Environmental LLC had fallen through due  
10 to the litigation. Facing very uncertain health and a certain prison term, Mr. Quinn needed  
11 to take steps to put some of his affairs in order.

#### 12 THE WINDSOR TRUST

13 In May 2002, Mr. Quinn turned to his friend James H. Smith, an experienced  
14 businessman, and associate Jeffrey Weinsten, who had a significant history with Sanitec,  
15 Ltd., and asked them to serve as trustees of an irrevocable trust. The sole asset of the  
16 Windsor Trust was to be Mr. Quinn's economic interest and ownership of Windsor  
17 Holdings LLC. Exh. 261, 262.

18 On May 13, 2002, Mr. Quinn wrote to Mr. Kaye and advised him that he was  
19 creating a trust for his 100% ownership of Windsor Holdings LLC and notifying Mr. Kaye  
20 that Mr. Kaye would no longer have any role with regard to Windsor Holdings LLC. Exh.  
21 221. Mr. Kaye would continue as president and chairman of Sanitec, Ltd. and continue his  
22 efforts to raise private capital for Sanitec West. By that time, the potential sale to Eden  
23 Environmental LLC has fallen through and Windsor Holdings LLC was merely a holding  
24 company for the shares of Sanitec Worldwide Ltd. which owned Sanitec Ltd. No evidence  
25 was presented that Mr. Quinn had directed David Kaye to take any action as manager or  
26 managing member of Windsor Holdings LLC since early January 2002.

27 With the assistance of New Jersey attorney Gerald Litwin and Jeffrey Weinsten, Mr.  
28

1 Quinn created the Windsor Trust u/d/t dated June 24, 2002, assigning "100% of the  
2 shares/ownership interest in Windsor Holdings LLC. Exh. 262.

3 Any contention that the Windsor Trust is invalid, or was created at some later date,  
4 is directly contradicted by the correspondence among Mr. Weinsten, Mr. Litwin, and Mr.  
5 Quinn (Exhs. 265-268) and the testimony of Mr. Quinn, Mr. Weinsten, Mr. Smith, Mr.  
6 Peter Babos, and Mr. Miller (regarding validity of the trust), as well as the obvious  
7 necessity that Mr. Quinn make such arrangements before surrendering to Federal custody  
8 in the Summer of 2002.

9 As of July 2002, Mr. Quinn's interest in Windsor Holdings LLC (and thereby  
10 Sanitec Worldwide Ltd. and Sanitec, Ltd) had been assigned to the Windsor Trust. David  
11 Kaye continued to serve as officer and director of Sanitec, Ltd., which had no daily  
12 business operations due to the litigation and continued to raise private capital for Sanitec  
13 West. Dr. Mary Riedinger, Mr. Quinn's long-time "significant other", held their 80%  
14 interest in Sanitec West, which managed by James R. Harkess. On August 19, 2002, Mr.  
15 Quinn began serving his Federal sentence at a medical facility in Ft. Worth, Texas.

16 It was Mr. Quinn's hope and expectation that once the Sanitec litigation was  
17 resolved, Mr. Smith and Mr. Weinsten would be able to successfully develop Sanitec, Ltd.  
18 and sell the company to pay off Mr. Quinn's creditors, including the so-called "note-  
19 holders" in Ohio.

20 Under the circumstances of the pending Sanitec litigation, it was appropriate for the  
21 Windsor Trust trustees to monitor the litigation and settlement talks as they did and, if  
22 necessary, take action through a vote of the LLC's shares of Sanitec Worldwide, Ltd.,  
23 which in turn controlled Sanitec, Ltd. From late January 2003 until July 7, 2003, the  
24 trustees monitored the process of the settlement proposals until it became apparent that the  
25 attorneys purporting to represent Sanitec Ltd.'s interest were contemplating settlement  
26 scenarios that would result in the transfer of Sanitec, Ltd.'s assets and intellectual property  
27 to Mr. Harkess and result in Sanitec Ltd.'s bankruptcy and dissolution.

28 In June 2003, the trustees conducted the necessary corporate meetings, minutes, and



1 resolutions to install new officers and directors of Sanitec Ltd. and to assert their control  
2 over Sanitec, Ltd.

3 On July 7, 2003, James H. Smith wrote to Ohio litigation counsel John R. Climaco  
4 to advise him that the Climaco firm was terminated from further representation of Sanitec,  
5 Ltd. and advising Mr. Climaco that neither Mr. Kaye nor Mr. Harkess had any authority to  
6 act on behalf of Sanitec, Ltd. Exh. 210.

7  
8 OHIO COUNSEL'S DEMAND FOR DOCUMENTATION

9 On Monday July 7, 2003, Peter Babos, John Climaco, David Kaye and James R.  
10 Harkess received copies of James H. Smith's termination to letter. Exh. 201.

11 On Wednesday July 9, 2003, Peter Babos replied to Mr. Smith with a cease and  
12 desist letter disputing Mr. Smith's claims to the control Sanitec, Ltd. Exh. 169.

13 On Tuesday morning, July 15, 2003, John R. Climaco send an email to Peter Babos,  
14 David Kaye and James R. Harkess asking "WHO DO I REPRESENT AND WHO DO I  
15 LISTEN TO?????" Exh. 211.1

16 On Thursday morning, July 17, 2003, Mr. Climaco demanded that Peter Babos, Mr.  
17 Kaye and Mr. Harkess send documentation by 9:00 a.m. the next morning showing that  
18 they had authority to act on behalf of Sanitec, Ltd. Exh. 212

19 Thursday evening at 9:32 p.m., Peter Babos transmitted by facsimile the documents  
20 that had been created for Mr. Climaco showing that Windsor Holdings LLC was owned  
21 100% by James R. Harkess.

22 The next morning, July 18, 2003, there was a conference call to discuss the  
23 documents so that Mr. Climaco could make truthful representations to Judge Nugent on  
24 Monday morning, July 21, 2003. Exh. 212.

25 The only reason James R. Harkess can make any claim to Windsor Holdings LLC  
26 was because he, David Kaye and Peter Babos participated in a ruse to satisfy their litigation  
27 attorney in Ohio and because no one could reach Mr. Quinn in Ft. Worth, Texas. Although  
28 the cross-complaint alleges fraud, it is not known whether Mr. Harkess intended to take

1 Windsor Holdings LLC for himself at that particular time. Mr. Harkess testified that he put  
2 the certificates in a drawer, and that he did not think them significant. The only purpose of  
3 the documents was to satisfy Mr. Climaco's demand to provide documents by Friday  
4 morning, July 18, 2003.

5 Mr. Kaye testified that before the false documents were prepared, Mr. Harkess told  
6 him that he and Mr. Quinn had an arrangement, and that he would take the shares for Mr.  
7 Quinn and settle the issue later when Mr. Quinn returned from prison. Mr. Harkess later  
8 wrote an email to Mr. Babos where he affirmatively referenced settling the issue with Terry  
9 at some point later -- "Until the issue gets resolved with Terry." Exh. 176, 177. Mr. Babos  
10 testified that both Mr. Kaye and Mr. Harkess told him that the documents were in Mr.  
11 Quinn's best interest, that they would undo the transaction when Mr. Quinn got home, but  
12 for reasons critical at that time, they needed to appease Mr. Climaco. At some point,  
13 however, it became clear the Mr. Harkess had decided that he no longer was representing  
14 Mr. Quinn's interest and claimed Windsor Holdings LLC for himself. Mr. Babos  
15 attempted to undue the transaction and get the parties to talk, but to no avail.

16 In January 29, 2004, Mr. Harkess made false representations to Judge Nugent  
17 concerning the documents that had been prepared on or about July 17, 2003. Exh. 444,  
18 Harkess testimony.

#### 19 QUINN RETURNS

20 In September of 2003, Mr. Quinn was release from Ft. Worth facility and contacted  
21 Mitchell R. Miller again to complete any work that had been interrupted. Mr. Miller  
22 testified that the trust was a valid irrevocable trust with no protection from creditors and  
23 that the membership of Windsor Holdings LLC is vested in James H. Smith and Jeffrey  
24 Weinsten, as trustees of the Windsor Trust w/d/t dated June 24, 2002.

#### 26 NO ACTUAL OR OSTENSIBLE AUTHORITY

27 Any claim by Mr. Harkess that he relied on the authority of Mr. Kaye and Mr.  
28 Babos' (Mr. Quinn's attorney) to give him the LLC is directly contradicted by his own

1 statements to Mr. Kaye and Mr. Babos that he was accepting the certificate on behalf of  
2 Mr. Quinn and would settle with Mr. Quinn later. (Babos and Kaye Testimony) Neither  
3 Mr. Kaye nor Mr. Babos had any membership interest of their own to give to Mr. Harkess  
4 in July, 2003. Neither Mr. Kaye nor Mr. Babos have any authority as Mr. Quinn's  
5 fiduciaries to give Mr. Quinn's interests and rights away. Because Harkess participated in  
6 the deceit himself, he cannot satisfy Civil Code § 2334. Harkess testified that he did not  
7 pay a penny for the stock, and he has suffered no detriment. Any claim as to this is false as  
8 it was Sanitec Industries, Inc. (not Harkess individually) that might be able to claim it  
9 incurred liability by virtue of its separate settlement agreement entered into with some of  
10 the Ohio note-holders.

11  
12 CONCLUSION

13 Plaintiff has failed to prove that Defendant Quinn is guilty of unclean hands as set  
14 forth in his opening statement. There was no dispute that the funds used to acquire  
15 Sanitec, Ltd. are traceable and should be repaid to the individual note-holders in Ohio.  
16 Plaintiff further failed to prove that the Trust was an invalid instrument created by Quinn in  
17 good faith and with proper purpose. Finally, plaintiff has failed to prove that Kaye and/or  
18 Babos had any actual or ostensible authority to transfer to him, for absolutely no  
19 consideration whatsoever, the entire ownership of Windsor Holdings. Such an act would  
20 be well beyond anything imagined or intended by Quinn, or risked by his attorney, Babos  
21 under any conceivable notion. Ownership of Windsor Holdings, LLC should be decided in  
22 favor of Quinn's trust.

23  
24 Dated: March 22, 2005

SLATER HATHAWAY LLP

25  
26   
27 MARK M. HATHAWAY

Attorneys for WINDSOR TRUST and TERRANCE QUINN  
28

# SANITEC

## Sanitec, Ltd.

March 1985 - Est. as Combustion Engineering Plant Mgmt Systems, Inc.  
 March 1988 - Name Change to Environmental Projects, Inc.  
 Sept. 1990 - Name Change to ABB Sanitec, Inc. by Asa Brown Boveri  
 Dec 1993 - Obtains U.S. Patent 5,270,000, Apparatus for treating medical hazardous wastes  
 April 1995 - Acquired by HS Holdings (NV), Name Change to Sanitec, Inc.  
 June 1996 - Obtains U.S. Patent 5,529,687, Filling sludge for appliances for the treatment of infectious waste  
 Aug 1996 - Obtains U.S. Trademark 1,991,211 for "Sanitec, Inc."  
 April 1999 - Obtains U.S. Trademark 2,238,405 for Sanitec®  
 Feb 1999 - Acquired by SICC (NV) [Quinn] using some funds loaned to Quinn by Venture companies. [Steven Ventré, Quinn's cousin].  
 April 2001 - Corporate reorganization - Sanitec Inc. merges with Sanitec Int'l Holdings (NV) and Standard Industrial Consulting Corp (DE), Standard Industrial Consulting Corp (NV) by NJ law firm.  
 April 2001 - Change Name to Sanitec, Ltd.

Sole shareholder of Sanitec Ltd is Sanitec Worldwide, Ltd. (DE) which is in turn owned by Windsor Holdings LLC (102 shares) [Windsor Trust] and Salem Associates, Inc. (DE) (98 shares) [Weinstein]

### Sanitec, Ltd Distributors

- Sanitec West (CA,OR,WA) [Harkess]
- Narita Trading (Taiwan)
- Steryl Medi Equip (India)
- SheGoTec, Inc. (Japan)
- Fkeppo/Bassi (Kuwait)
- Sanitec of Kentucky [Guardian Investments/Ventre companies] sold to Stericycle circa 2002

In April 2002, Sanitec Ltd. and Sanitec West sue Dellolacovo, Sanitec Group LLC, et al. The competing claims and counter claims are pending before the Hon. Donald C. Nugent, U.S. District Judge in the Northern District of Ohio, *Sanitec West et al v. Dellolacovo et al*, USDC Case No. 1:02-cv-01582-DCN. Case is stayed pending resolution of California issue of ownership of Windsor Holdings LLC and who, therefore, represents the interests of Sanitec Ltd. - Jim Harkess or James Smith and Jeffrey Weinstein.

## Sanitec Group, LLC

Formed February 20, 2002 by Joe Dellolacovo, while he was an officer and director of SANITEC, LTD, and without his consent or knowledge. Dellolacovo resigned from Sanitec, Ltd on March 21, 2002 and began operating Sanitec Group, LLC, claiming that it now owned all of Sanitec, Ltd.'s assets and intellectual property. Dellolacovo placed derogatory information about Sanitec West on the Internet, which interfered with Sanitec West's private placement memorandum efforts. Sanitec Ltd and Sanitec West sued Dellolacovo et al., which is pending before Judge Nugent. Sanitec Group LLC is a subsidiary of Guardian Investments, LLC, a Steve Ventré enterprise, which claim rights to Sanitec Ltd's assets by virtue of money loaned to Quinn by Ventré.

## Sanitec Industries, Inc.

California corporation formed by James Harkess on February 19, 2003, while an officer and director of Sanitec West [ABB Sanitec West, Inc.] Harkess now claims Sanitec Industries Inc holds all Sanitec, Ltd.'s intellectual assets, based on an assignment from Sanitec Group, LLC. At the same time, Harkess is claiming to represent the interests of Sanitec Ltd., in the litigation in Ohio against Sanitec Group, LLC, hence the dispute.

## Sanitec USA, Inc.

California corporation formed by James Harkess on January 2, 2004, while he was a director and officer Sanitec West. Harkess now claims Sanitec USA, operates the business that used to belong to Sanitec West. Those issues are pending in *Riedinger v. Harkess, et al* Case No. BC322202 (involving claims against Harkess for diluting the majority stock ownership of ABB Sanitec West, Inc.)